

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Onyx Environmental Services
1125 Hensley Street
Richmond, California 94801

ID No. CAT080014079

Respondent.

Docket HWCA 2002-0062

CONSENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

The California Department of Toxic Substances Control (Department) and Onyx Environmental Services (Respondent) enter into this Consent Order and agree as follows:

1.1. Site. Respondent generates, handles, treats, stores, and/or disposes of hazardous waste at the following site: 1125 Hensley Street, Richmond, California 94801 (Site).

1.2. Inspection. The Department conducted a Financial Responsibility Review Evaluation on May 20, 2002.

1.3. Permit/Interim Status. The Department conducted a Financial Responsibility Review Evaluation on May 20, 2002.

1.4. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.5. Dispute. A dispute exists regarding the violations alleged below. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

1.6. Full Settlement. This Consent Order shall constitute full settlement of the violations alleged below, but does not limit the Department from taking appropriate enforcement action concerning other violations.

VIOLATIONS ALLEGED

2. The Department alleges the following violations:

2.1.1. Respondent violated title 22, California Code of Regulations, section 66264.143, subdivision (b)(2), in that Onyx Environmental submitted Surety Bond Number ESD5297541 naming the California Integrated Waste Management Board as beneficiary during the periods:

(a) November 10, 2000 through February 12, 2001 (93 days); and,

(b) May 2, 2002, through May 23, 2002 (21 days).

2.1.2. Respondent violated title 22, California Code of Regulations, section 66264.142, subdivision (b), in that on or about January 21, 2002, Onyx Environmental failed to adjust its closure cost estimate using the most recent inflation factor.

2.1.3. Respondent violated title 22, California Code of Regulations, section 66264.143, subdivision (b)(7), in that on or about January 21, 2002, Onyx Environmental failed to increase the penal sum of Surety Bond Number ESD5297541 to equal its closure cost estimate.

SCHEDULE FOR COMPLIANCE

3. Respondent shall comply with the following:

3.1. The violations have been corrected, no further action is required.

3.2. Liability. Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent

Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.3. Government Liabilities. The Department shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the Department be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

3.4. Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.5. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

4.1. Additional Enforcement Action. By agreeing to this Consent Order, the Department does not waive the right to take further enforcement action, except to the extent provided in this Consent Order.

4.2. Penalties for Noncompliance. Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

4.3. Parties Bound. This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants,

receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

4.4. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

4.5. Privileges. Nothing in this Consent Agreement shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney work-product. However, the assertion of any privilege shall not relieve any party of its obligations under this Consent Order.

PENALTY

5.1. Respondent shall pay the Department the total sum of \$9,140, which includes \$4,863.96 as reimbursement of the Department's costs.

5.2. Payment of \$9,140 is due within 30 days from the effective date of this Consent Order.

5.3. Respondent's check shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Ms. Patricia Barni, Unit Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710

and

Mr. James Grace
Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

5.4. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

RIGHT TO A HEARING

6. Respondent waives any right to a hearing in this matter.

EFFECTIVE DATE

7. The effective date of this Consent Order is the date it is signed by the Department.

Dated: Nov. 5, 2003

Original signed by
{Greig R. Siedor}
Greig R. Siedor
Onyx Environmental Services

Dated: Nov. 21, 2003

Original signed by
{Patricia Barni}
Patricia Barni, Unit Chief
Department of Toxic Substances Control
Statewide Compliance Division